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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION

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FCC 93M-413

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MM DOCKET NO. 93-94
DISPATCHED BY

In re Applications of

SCRIPPS HOWARD BROADCASTING COMPANY

For Renewal of License of Station WMAR-TV
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For a Construction Permit for a New
Television Facility on Channel 2
at Baltimore, Maryland

File No. BRCT-910603KX

File No. BPCT-910903KE

MEMORANDUM OPINION AND ORDER

Issued: June 24, 1993

Released: June 25, 1993

Background

1. This is a ruling on a Motion For Continuance Of Hearing filed by Scripps Howard Broadcasting Company ("Scripps Howard") on June 15, 1993. Scripps Howard also filed a Request To Amend And Amendment Of Motion For Continuance on June 18, 1993. Opposition To Motion For Continuance Of Hearing was filed by Four Jacks Broadcasting, Inc. ("Four Jacks") on June 21, 1993. The Bureau has advised that it does not intend to file any Comment.

2. The initial hearing date was set in the Chief Judge's assignment Order (FCC 93M-144) for September 8, 1993. At the first Prehearing Conference held on June 3, 1993, the Presiding Judge sua sponte reset the hearing date for October 13, 1993 (FCC 93M - 337). Counsel were not aware that the date would be changed until it was announced from the bench at the conference. Before its conclusion, one of the trial counsel for Scripps Howard, Mr. Leonard C. Greenebaum, advised that he and other counsel who were engaged in a state court case in Colorado had reset the trial in that case for October 12, 1993, in reliance on the September 8 hearing date in this case. See Prehearing Conference Tr. 57-62. Scripps Howard requested a delay of the hearing until the week after October 13, 1993. Id. Four Jacks objected. Id. The Presiding Judge instructed Mr. Greenebaum to see if the dates of the Colorado case could be arranged to accommodate the new hearing date of October 13, 1993. Id. at 59. In view of the objections of Four Jacks, the Presiding Judge required that Scripps Howard proceed by motion if it remained necessary to seek a change of the hearing date in this case beyond October 13, 1993.

3. After receiving a copy of the Motion, Bureau counsel advised that one of its attorneys had a conflict in another renewal case which was set for hearing the week of October 25, 1993. The first available date for Bureau

counsel would be the week of November 8, 1993. Scripps Howard disclosed that fact in its Amendment. The hearing conflict of Bureau counsel, which was not known at the Conference, is an independent ground for not starting this case on October 25. Therefore, the hearing date will not be scheduled for the week of October 25, 1993, as originally requested by Scripps Howard. The question remains to decide whether Scripps Howard's request for a new hearing date should be granted because of a conflict of one of its counsel.

Facts

4. The documentation attached to Scripps Howard's Motion establishes the fact that the law firm that is representing Scripps Howard is also representing a party to a lawsuit in a Colorado state court. Mr. Greenebaum, who is a senior litigation partner, has entered his appearance in both the Colorado litigation and in this renewal proceeding. According to the affidavit of an attorney who is lead counsel in the Colorado action, the trial was originally set for June 14, 1993. On May 26, 1993, the decision was made to seek a later trial date because (1) witnesses were unavailable; and (2) there was a conflict in Mr. Greenebaum's trial calendar. The conflict is represented in Scripps Howard's Motion to be the September hearing date which was an additional factor in seeking the delay in Colorado to October 12. Before the Prehearing Conference of June 3, 1993, a Stipulated Motion To Reschedule Trial was executed by counsel for all parties in the Colorado action and the agreed date was stated to be October 12, 1993. Therefore, it is established as a fact that when counsel appeared at the Prehearing Conference there was a commitment by Mr. Greenebaum to participate in the Colorado litigation commencing October 12, 1993. Because of related litigation to be tried seriatim, the time expected in the Colorado court would be about one week. Thus, the week of October 25 would be the earliest that Mr. Greenebaum could participate in the WMAR-TV renewal case. And because of the conflict of one of the Bureau counsel, the earliest alternate date would be Monday November 8, 1993.

5. Four Jacks objects to moving the date from October 13, 1993, to October 25 or November 8, 1993. Rather, Four Jacks argues that there is not an adequate reason to change the date anytime beyond October 13, 1993. First, Four Jacks asserts that the request is not justified noting that the law firm which represents Scripps Howard has an estimated twelve litigators in its Washington, D.C. office who could substitute for Mr. Greenebaum. Also, as noted in the Opposition, there are three other attorneys of record representing Scripps Howard in this case. Four Jacks argues that the case should not be "held hostage" and that it would be "highly prejudicial" to continue the case on the basis of the reason advanced by Scripps Howard. Four Jacks relies on the Presiding Judge's affirmation from the bench that he was "staying with" the October 13 date after Mr. Greenebaum disclosed his conflict. Four Jacks notes the Presiding Judge's reference to his bench ruling as taking priority over any later order of a state court. Four Jacks notes further that the Presiding Judge's written Order setting the October 13 date for this case was released on June 7, 1993, while the Colorado court's Order which approved the June 1st Stipulation was signed by a judge on June 8, 1993.

Discussion

6. Now, following the review of the pleadings, an Affidavit and the Stipulation, the Motion For Continuance Of Hearing will be granted. The facts establish that Mr. Greenebaum, in part in reliance on a September hearing in this case, had committed himself to the October 12 date in Colorado before counsel appeared on June 3 at the conference. It was at the June 3 conference that counsel were told for the first time that the date of the hearing in this case was being reset by the Presiding Judge to October 13. In fact, a Stipulation had been signed by all counsel to the Colorado action on June 01, 1993 which they intended to submit to the Colorado trial judge. Thus, there is no direct evidence or even an inference of an intentional delay of the case. Nor is there any evidence or inference that Scripps Howard is seeking any delay. Mr. Greenebaum was setting his Colorado commitment to accommodate an earlier September hearing of this case with all the considerable preparation that it entails. There has been no inclination shown on the part of Scripps Howard to delay the hearing of this case once it appeared that it was not going to be certified to the Commission and stayed.¹ There is no showing made by Four Jacks as to how the new dates of October 25 (one week later) or November 5 (three and a half weeks later) would be holding the case a hostage. Nor has there been any showing of a prejudice to any party. The Bureau, which is charged with representing the public interest, does not assert a prejudice. Whether or not a resourceful law firm is able to arrange for substitute counsel is not an issue for resolution. Scripps Howard has chosen its counsel and there is no cause shown for denying that choice. As indicated in an earlier discussion of his involvement, Mr. Greenebaum has been acting as counsel in this matter since April 1992. See Memorandum Opinion And Order, FCC 93M-228, released May 6, 1993 at n.1. It would be unreasonable under these circumstances to expect another attorney in the firm to acquire a similar familiarity with the case at a considerable expense to the client solely to avoid a one to three week delay.² Nor should Scripps Howard be required to go forward with one less attorney in order to avoid the de minimis delay involved here.

Rulings

Accordingly, for the foregoing reasons, IT IS ORDERED THAT the Motion For Continuance Of Hearing filed on June 15, 1993, by Scripps Howard Broadcasting, Inc., IS GRANTED.

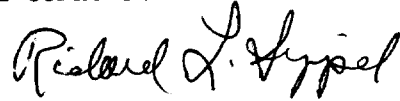
IT IS FURTHER ORDERED that the hearing date set for October 13, 1993, IS CANCELLED.

¹ Both parties have sought to have this case certified to the Commission for different reasons. There is no reason disclosed from the procedural history of this case to recognize a greater inclination for delay on the part of any one applicant party.

² There is no assurance that a newly assigned litigation partner who might replace Mr. Greenebaum might not also have conflicts that would need to be considered.

IT IS FURTHER ORDERED that the hearing date of this case IS RESET for November 8, 1993 at 10 a.m. in a Commission courtroom in Washington, D.C.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge

³ The Admissions Session remains set for October 05, 1993. The Presiding Judge has blocked off sufficient time to complete the case on the issues presently framed before Thanksgiving. The parties should also note that Thursday, November 11, 1993, is a federal holiday and there will be no hearing held on that day.